SUPREME COURT, U. S.

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No. 48

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

MINNIE E. NASH, *Petitioner,*

v.

FLORIDA INDUSTRIAL COMMISSION, *et al.*

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

REPLY BRIEF FOR PETITIONER

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The Company's brief drags two "red herrings" into the argument. We dispose of them herein.

1. First, the Company suggests (pp. 5-6) that filing charges with the NLRB cannot be a privilege or immunity of national citizenship because (a) only "employees", and not all citizens, can file such charges, and (b) employees who are not citizens can file such charges. Neither contention is valid.

It is not true that only "employees" can file charges. While they are, to be sure, the Act's intended beneficiaries, this Court has recognized that there is no "limitation on the classes of persons who could lodge complaints with the

Board". *NLRB* v. *Indiana & Michigan Electric Co.*, 318 U.S. 9, 17. Even "strangers to the labor contract" are free to file charges. *Id.* at p. 18.

Nor does it matter that non-citizens may file charges This is equally true of every other act which, *when exercised by citizens,* this Court has held to constitute a "privilege or immunity" of national citizenship. Thus, non-citizens may inform of violations of the Federal criminal code, yet a citizen who informs is exercising a "privilege or immunity" of national citizenship. *In re Quarles,* 158 U.S. 532, 536. Likewise, non-citizens may come to the seat of government to assert claims against it, to transact business with it, and to seek its protections, yet these acts too, when engaged in by citizens, have been recognized as "privileges and immunities" of national citizenship. *Slaughterhouse Cases,* 83 U.S. 36, 79.

2. Next, the Company argues (pp. 14-18) that, if a State may deny unemployment benefits to employees engaged in the constitutionally-protected act of striking, it must follow that the State may likewise deny such benefits to employees engaged in the constitutionally-protected act of filing charges. The two situations are, however, totally different, and no constitutional identity can be presumed.

Florida has chosen, in its Unemployment Act, to provide compensation only to those "unemployed through no fault of their own". Florida Statutes (1965) Section 443.02. Florida has thus drawn the common line between the voluntarily and involuntarily unemployed. See, e.g. *Unemployment Compensation Commission* v. *Aragon,* 329 U.S. 143, 154 and n. 13 thereat (1946). We do not here challenge as constitutionally unreasonable a classification which denies compensation to those whose unemployment is the result of their own election. We assume, *arguendo,* that Florida may

deny compensation to all who voluntarily absent themselves from work, whether to strike, to participate in a civil rights demonstration, or to go fishing.[1] In so doing, Florida is not *penalizing* the exercise of any constitutional right. It is merely applying a uniform rule to all who voluntarily absent themselves. It is refusing to subsidize voluntary absence.

In the present case, however, petitioner was not voluntarily absent. She was laid off by her employer on May 16, 1965, and she remained on layoff until October 5, 1965. During that entire period her unemployment was involuntary, and was of the type normally compensable under the Act. The filing of charges on June 17, 1965 neither caused nor prolonged petitioner's unemployment.

In disqualifiying petitioner here, therefore, Florida was not applying its uniform policy against subsidizing voluntary absence. Rather, it was *deviating* from its policy of compensating involuntary absence in order to single out, and penalize, those who engage in a constitutionally protected act.

There is thus no logical correlation between the constitutional questions raised by disqualification for striking and those raised by the disqualification here. Accordingly, we need not and do not explore the questions raised by the former. See footnote 1, *supra*. It is sufficient, for this case, to note that *even if* disqualification for striking is constitutional, that would in no way augur a similar ruling with respect to disqualification for filing charges.

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[1] But see *Sherbert* v. *Verner*, 374 U. S. 398 (1963), holding that South Carolina could not disqualify employees whose voluntary absence was predicated upon religion strictures against working on Saturdays.

CONCLUSION

For the reasons set forth hereinabove, and in petitioner's opening brief, the decision below must be reversed.

Respectfully submitted,

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